SUPREME COURT OF THE UNITED STATES.

No. 5.

GUSTAVUS BEAL, ET AL., PLAINTIFFS IN ERROR,

VERSUS

LESSEE OF OLIVER HOLMAN, ET AL.

ERROR TO THE CIRCUIT COURT U. S. FOR ALABAMA. (S. D.)

INDEX.

	Original.	Print.
Writ of Error,	1	3
Citation and Service,	2	3
Bond to prosecute Writ of Error, and Clerk's Certificate,	3	4,5
Declaration in Ejectment,	4	5
Notice to Defendants—Plea, &c.,	7	8
Suggestion by Defend's—Jury sworn—Verdict,	8	9
Judgment on Verdict,	9	10
Bill of Exceptions,	9	14
Diagram and Certificates,	17	17
Exhibits, &c.,	18	17
Clerk's Certificate,	33	31

S. D. Langtree, Print.

UNITED STATES OF AMERICA.

The President of the United States to the Judges of the Circuit Court of the United States for the ninth judicial circuit and southern district of Alabama:

Because in the record and proceedings, as also in the rendition of judgment, in a plea which is in the said circuit court, before you, between Gustavus Beal and Henry Myers, plaintiffs, and John Doe, lessee of Oliver Holman and Agnes Howard, an infant, under the age of 21 years, by her guardian and next friend, Adonis Howard, defendants, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears, and it being fit, if error there be, the same should be duly corrected, and full and speedy justice be done the parties aforesaid, do command you, if judgment be rendered, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the Supreme Court, to be then and there held, that the record and proceedings being inspected, the said Supreme Court may cause further proceedings therein, to correct the error, what of right, according to law and the custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the [L. S.] said Circuit Court, this second Monday of January, in the year of our Lord one thousand eight hundred and thirty-eight.

Issued the seventeenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest: DAVID FILES,
Clerk Southern District Alabama.

UNITED STATES OF AMERICA.

To Oliver Holman and Agnes Howard, an infant, under the age of 21 years *of age*, by her guardian and next friend, Adonis Howard, or John F. Adam*us*, and Gayle & Van De Graff, your attornies, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States, for the ninth judi-

cial circuit, wherein Gustavus Beal and Henry Myers are plaintiffs, and John Doe, lessee of the said Oliver Holman and Agnes Howard, an infant, under the age of 21 years, by her guardian and next friend, Adonis Howard, is defendant in error, to show cause, if any there be, why the judgment in the said writ of error should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable John McKinley, one of the Justices of the Supreme Court of the United States, this day of May, A. D. 1838.

J. McKINLEY, *Associate Justice of the Supreme Court of the United States.*

Service acknowledged, May, 1838.

GAYLE & VAN DE GRAFF, and J. F. ADAMS, *Plaintiff's Attorneys.*

Know all men by these presents, that we, Gustavus Beal, Henry Myers, William H. Robertson, Humphrey B. Gwathmey, and Arch'd Brown, are held and firmly bound unto Agnes Howard and Oliver Holman, in the sum of eight thousand dollars, lawful money of the United States, to be paid to the said Agnes Howard and Oliver Holman, their certain attorney, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this 16th day of May, A. D. 1838.

The condition of this obligation is such, that whereas the above bounden Gustavus Beal and Henry Myers have sued out a writ of error, returnable to the Supreme Court of the United States on the second Monday of January, A. D. 1839, on a certain judgment recovered against them at the April term of the Circuit Court of the United States for the southern district of Alabama, in a certain action of ejectment, wherein Doe, on the demise of the said Agnes Howard and Oliver Holman, was the plaintiffs, and the above bounden Gustavus Beal and Henry Myers were defendants.

Now, if the said Gustavus Beal and Henry Myers shall prosecute their said writ of error with effect, or, failing therein, shall pay to the said Agnes Howard and Oliver Holman all costs and damages which they may sustain, by the failure of the said Gustavus Beal and Henry Myers to sustain their said pleas, then this obligation to be void; otherwise, to be and remain in full force and virtue.

GUSTAVUS BEAL, [L. S.]
HENRY MYERS, [L. S.]
H. B. GWATHMEY, [L. S.]
ARCH'D BROWN, [L. S.]
WM. H. ROBERTSON. [L. S.]

Bond taken and approved, in open court, this 16 day of May, 1838, by the presiding judge.

Attest: DAVID FILES, *Clerk.*

I, David Files, clerk of the Circuit Court of the United States for the ninth judicial circuit and southern district of Alabama, do hereby certify that the above is a true copy of the original bond on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said Circuit Court, this 17 day of May, in the year of our Lord one thousand eight hundred and thirty-eight. [L. S.]

DAVID FILES,
Clerk Southern District Alabama.

Pleas had before the Honorable the Circuit Court of the United States for the ninth judicial circuit and southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before his honor, John McKinley, presiding judge of said court:

Be it remembered, that heretofore, to wit, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and thirty-six, Oliver Holman, and Agnes Howard, an infant, under the age of 21 years, by her guardian and next friend, Adonis Howard, filed their declaration in ejectment, in the words and figures following, to wit:

UNITED STATES OF AMERICA:

District Court of the Southern District of Alabama, of the term of the first Monday of May, A. D. 1836.

John Doe, who is a citizen of the State of Massachusetts, by his attorney, complains of Richard Roe, who is a citizen of the State of Alabama, in custody, &c., of a plea of trespass in ejectment, &c., that whereas Oliver Holman, and Agnes Howard, an infant, under the age of 21 years, by her guardian and next friend, Adonis Howard, who are all citizens of the State of Massachusetts, on the first day of January, A. D. 1831, in the county of Mobile and State of Alabama, had *dismissed* to the said John Doe a certain lot or parcel of land, situate, lying and being in said county and State of Alabama, together with the storehouses, hereditaments, and appurtenances thereunto belonging, and bounded and described as follows, that is to say: beginning at the southeast corner of Water and St. Francis streets, in the city of Mobile, by a line running thence southwardly, along the east side of Water street seventy feet, to

a point; thence, by a line running eastwardly, and parallel with St. Francis street eighty feet, to a point; thence, by a line running northwardly, and parallel with Water street seventy feet, to a point on the south side of St. Francis street; thence, by a line running along the south side of St. Francis street to the place of beginning: to have and to hold the same, to the said John Doe and his assigns, from the said first day of January, in the year 1831 aforesaid, for and during, and until the full end and term of ten years, and fully to be complete and ended. And also, that whereas the said Oliver Holman, on the first day of January, 1831, at the said county of Mobile, had demised to the said John Doe other lot of land, with the storehouses thereon, situate, lying and being in the said county and State of Alabama, and bounded and discribed as follows: situate at the southeast corner of St. Francis and Water streets, in the city of Mobile, and bounded north by St. Francis street, south by a line parallel therewith and seventy feet therefrom, west by Water street, and east by a line parallel with Water street, and eighty feet distant therefrom: to have and to hold the same, to him, the said John Doe, and his assigns, from the first day of January, A. D. 1831, for and during, and until the full end and term of ten years thence next ensuing, and fully to be complete and ended.

By virtue of which several demises, the said John Doe entered into the said several lots of land and tenements first and secondly above mentioned, and became and was possessed thereof, for the said terms, so to him thereof granted; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the second day of January, 1831, with force and arms entered into the said lands and tenements, first and secondly above mentioned, of which the said John Doe was so possessed for the said several terms which are not yet expired, and ejected the said John Doe from his said several lots of lands and tenements.

And that also, that whereas the said Agnes Howard, by her said guardian, Adonis Howard, on the first day of January, A. D. 1836, at the said county of Mobile and State of Alabama, had demised to the said John Doe other certain lot of land with the storehouses thereon, situate and being in the said county of Mobile and State of Alabama, bounded and discribed as follows: situated at the southeast corner of St. Francis and Water streets, and bounded north by St. Francis street, south by a line paralleld therewith, and seventy feet distant therefrom: west by Water street, and east by a line parallel therewith, and eighty feet distant therefrom: to have and to hold to him, the said John Doe, and his assigns, from the first day of January, 1836 aforesaid, for and during the full term of ten years thence next ensuing, and fully to be complete and ended. By virtue of which demise, the said John Doe entered into the said tenements, with the appurtenances last above mentioned, and became and was possessed thereof for the said term to him thereof granted, and the said John Doe being so thereof

possessed, the said Richard Roe afterwards, to wit, on the second day of January, 1836, with force and arms entered into the said tenements last mentioned, with the appurtenances, which the said Agnes, by her guardian, had demised to the said John Doe, for the term last aforesaid, which is not yet expired, and ejected the said John Doe from the said last mentioned premises, and other wrongs and injuries the said John Doe them and there did to the said John Doe, and against the peace of the State of Alabama. Whereupon the said John Doe saith that he is injured, and hath sustained damage to the value of fifty thousand dollars, wherefore he sues by

J. F. ADAMS, GAYLE,
and VANDEGRAAF, *Pro Quer.*

And also, for that, whereas the said Oliver Holman afterwards, to wit, on the 10th day of January, 1831, in the county of Mobile aforesaid, had demised to the said John Doe a certain other lot or parcel of land lying and being in the city of Mobile in the said county, together with the houses thereon belonging, and bounded and discribed as follows, that is to say: north by St. Francis street, south by a line parallel therewith, and distant seventy feet therefrom, west by Water street, and east by a line parrallel therewith, and distant eighty feet eastwardly therefrom, to hold the same to him, the said John Doe, from the said 10th day of January, for and during, and until the full end and term of ten years thence next ensuing, and fully to be complete and ended.

And also, that whereas the said Agnes Howard, by her said guardian, Adonis Howard, afterwards, to wit, on the said tenth day of January, 1831, in the county of Mobile aforesaid, had demised to the said John Doe other tract of land, situate, lying and being in the said city and county of Mobile, together with the houses thereon situated, and thereon belonging, and bounded and described as follows, that is to say: north by St. Francis street, south by a line parrallel therewith, and seventy feet distant therefrom, west by Water street, and east by a line parrallel therewith, and eighty feet distant therefrom. To hold the same to him, the said John Doe, from the said 10th day of January, 1831, for and during, and until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which several demises, the said John Doe entered into the said several lots of land and tenements, first, secondly, and thirdly above mentioned, and became and was possessed thereof for the said several terms, so to him thereof respectively demised as aforesaid, and the said John Doe being so thereof possessed as aforesaid, the said Richard Roe, afterwards, to wit, on the 11th day of January, 1831, with force and arms entered into the said lands and houses with the appurtenances above mentioned, of which the said John Doe was so possessed by virtue of the said several demises in the manner and for the terms aforesaid, which are not yet expired, and ejected the said John

Doe from his several lots of land and houses, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace of the State of Alabama. Whereupon the said John Doe saith that he is injured, and hath sustained damage to the value of fifty thousand dollars, and therefore, &c.

J. F. ADAMS, GAYLE & VANDEGRAAF,
Pro Quer.

Mr. Gustavus Beal and Henry Myers, citizens of the State of Alabama.

I am informed that you are in possession of, or claim title to, the premises mentioned in this declaration of ejectment, or to some part thereof, and I being sued in this action as a casual ejector, and having no claim or title to the same, do advise you to appear at the next term of the district court of the United States, for the southern district of Alabama, to sit at the city of Mobile, on the second Monday of December next, and then and there to cause yourself to be made defendant in my stead, otherwise I shall suffer judgement to be entered against me, and you will be turned out of possession.

Your loving friend,
RICHARD ROE.

Nov. 30, 1836.

I hereby acknowledge myself bound as security for cost in this cause.

J. F. ADAMS.

Received December 5th, 1836, and served same day by handing a copy.

R. L. CRAWFORD.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for said district, at Mobile, on the second Monday of December, in the year of our Lord one thousand eight hundred and thirty-six, before his honor, William Crawford, Judge of said court, came the said parties as follows, to wit: this day came the parties by their attornies, and the plaintiffs, by leave of the court, first had and obtained, having amended his declaration by filing additional counts, and the said defendants having confessed lease, entry, and ouster, and pleads not guilty; it is therefore ordered by the court that said cause be continued.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-seven, before his honor, William Crawford, judge of said

court, by consent of parties, it was ordered that this cause be continued.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for said district, at Mobile on the second Monday of October, in the year of our Lord one thousand eight hundred and thirty-seven, before his honor, William Crawford, judge of said court; it was ordered by the court that this cause be continued.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for the district aforesaid, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before the honor*able* John M'Kinley, judge of said court, the defendants by their attornies, on the trial of this cause, and before the same was submitted to the jury, made the following suggestion of record, to wit:

Circuit Court of the United States, Southern District of Alabama.

Spring Term, 1838.

Doe on demise of Holman and Howard.

The said defendants come and suggest to the court that they and those persons whose estate they have in the lands and tenements, for have had adverse possession to the plaintiffs of the same, for three years next before the commencement of this suit; and that they and those persons whose estate they have in the lands and tenements, have made permanent and valuable improvements on the said lands during the time that they have had such adverse possession of the said lands and tenements, and this they are ready to verify; whereupon they pray judgement, and that the jury shall assess the value of said improvements at the time of trial, which have been made by the defendants or by those whose estate they have, and that the jury assess the value of the land and tenements, and return a virdict for the same. And that they assess the value of the use and occupation of the same, without considering the increase value thereof, by reason of such improvements as shall have been made by the defendants, or by those whose estate he has.

GORDON, CAMPBELL and CHANDLER.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for said district at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before his honor John M'Kinley, presiding judge of said court, came the parties as follows, to wit: this day came the parties by their attorneys, whereupon, also, came the following jury, to wit: F. F. Swann, E. O. Jones, S. Warren, T. Rogers, T. St. John, R. R. Corlis, D. Hubbard, W. J. Duvol, S. Dudley, T. B. Childress, A. Smoot, W. Calvert, twelve good and lawful men,

who being elected, tried and sworn, upon their oaths do say, that the said Gustavus Beal and Henry Myers are guilty of unlawfully withholding the said within discribed premises from the said Agnes Howard and Oliver Holman, and that the said Agnes and Oliver are well entitled to hold the same in fee; and upon the suggestion of defendants, they further find that the defendants and those whose estate they have, have been in adverse possession of said premises for three years next before the commencement of this suit; that they have made valuable and permanent improvements thereon, during the time they have had adverse possession of the same, and that they do assess the value of said improvements at forty-one thousand dollars; that said premises, exclusive of improvements, are worth thirty-one thousand five hundred dollars, and that they do assess the value of the use and occupation thereof by the said defendants, without considering the increased value of the same by improvements, to thirty-six hundred dollars. It is therefore considered by the court that the said Oliver Holman and Agnes Howard, do recover against the said Gustavus Beal and Henry Myers the possession of the aforesaid premises; and that a writ of possession issue, provided that within one year from the date hereof, the said plaintiffs shall pay into the hands of the clerk of this court, for the use of the defendants, the sum of thirty-seven thousand four hundred dollars, the value of the improvements over the value of the premises, and of the assessed value of use and occupation aforesaid; and if, at the expiration of the said twelve months, the said sum of thirty-seven thousand four hundred dollars be not paid by said defendants, no writ of possession shall issue within the further space of three months thereafter, provided the defendants do, within the said last mentioned space of three months, pay into the hands of the clerk of this court, for the use of the plaintiffs, the sum of thirty-one thousand five hundred dollars, the value aforesaid, of the premises aforesaid, and of the value of the use and occupation thereof aforesaid; and on payment of said last mentioned sum of money, the title of the lessors and their writ of possession shall be forever barred. But in case of the non-payment, by the defendants, of the said last mentioned sum of money, the said plaintiff's writ of possession shall issue. It is ordered by the court that said plaintiffs have execution for their costs.

Whereupon, during the term aforesaid, of the court aforesaid, and at the trial of said cause, and before the same was submitted to the jury aforesaid, the said defendants, by their counsel, tendered to his honor, the presiding judge, a bill of exceptions, which was signed and sealed, and which said bill and the exhibits thereto annexed are in the words and figures following, to wit:

Doe on the demise of Holman and Howard vs. Gustavus Beal & others, upon the trial of this cause in the circuit court of the United

States, for the southern district of Alabama, the plaintiff to sustain their issue, proved that, before the year 1785, *that* one Genioy was in possession of a lot in the city of Mobile, at the corner of St. Francis and Royal streets, that he occupied the same till his death, when he gave the same to his god-daughter, Lucy Landry. That about 1788, Simon Landry took charge of the same for his daughter, and when she came to woman's estate, that she used and occupied the same as her property. It was further in evidence that in 1818, she conveyed the lot to McKinsey & Swett, by a deed in which the eastern boundary was laid down as the Mobile river, and, it is admitted, embraced the lot in dispute. McKinsey and Swett conveyed on the same day to Oliver Holman, who took possession of the same in 1818; the said Oliver erected houses and a wharf upon the lot, and occupied the same as a merchant in co-partnership with one Charles Brown. The said Brown constantly residing in Boston, Mass., and Holman in Mobile; the said Holman died in December, 1822, leaving three children, Oliver Holman, one of plaintiff's lessors, and Catherine Holman, who married one Howard, and is the mother of the plaintiff's lessor, Agnes Howard. Catherine Howard died in 1829, leaving no issue except Agnes. The remaining child died without issue.

It was in evidence that Lucy Landry was the reputed owner of the lot occupied by her during the whole time of her occupancy, and the witnesses testified that they had not heard of any adverse claim to hers. *The* sole and personal possession commenced before the year 1803, and the witnesses all fixed it about 1800, or perhaps a year or two prior to that year, prior to her attainment of woman's estate; they testified that she lived with her father, and that he managed the property for her. No proof came from the plaintiff of any paper title in either of the Landry's. It was admitted that the defendants *was* in possession of the property at the commencement of this suit. The deeds from McKinsey and Swett to Holman, and from Lucy Landry to McKinsey and Swett, bear date in January, 1818, and are formal and certain; *no* objection was made to their sufficiency. The actual possession of Lucy Landry was proven to be enclosed. That it extended on Royal street the whole distance claimed in the declaration, and that on the east, her enclosure was marked by a fence that followed the line of highest water mark of Mobile river. St. Francis street runs east and west, and terminates in the river. Royal street is parallel with the river. During the existence of the Spanish dominion over this country, it was in evidence that Water street, (a street parallel with Royal street and Mobile river) was an irregular bank reaching from St. Francis, southwardly, the length of the city, formed by deposites of shells and land, and much higher than any land east of it, or to any land to which the water extended. This high land was not subject to inundation, tho' in many places the water run across it. This line was about four hundred feet from Royal street. Lucy

Landry's eastern line of fence was about two hundred feet from it, and the intermediate lands, grounds, were rarely uncovered by water, and was consequently subject to the influx and reflux of the tides. That until the improvements by Holman, ii was not susceptible of any occupancy, and no person did occupy it. It was further in evidence, that in 1817, or '18, Water street was located on its present site and location, and that the land in dispute *were* to the east of that street, and to the east of the line of high land before spoken of; that before the Spanish authorities left the country, *that* they protected with great care the whole ridge, and that no person was permitted to remove the earth from the same, and that no settlement of any kind or improvement was made upon it, or between it and the river, and that it was known as the king's highway, and the king's landing place. It was further in evidence, that after the American authorities took possession of the country, the common impression and understanding was, that the property east of this line (Water street) did not belong to the proprietors of lots on the west, and that much difficulty was felt until about 1818, as to whom the property did belong; and that about and after that time, entries were made by claimants of property on the west, and in other cases under the corporate authorities of the city. And to quiet men's minds upon the subject, a petition of about fifty of the citizens was sent on to Congress, which passed an act of the 26th May, 1824, on this subject. It was further in evidence, that a change seemed to take place in the public opinion on this subject of their rights between 1818, and '24. It was in proof, that Holman was one of the first that entered on these lots, and built a wharf and warehouse, in 1819, or '20, to the east of Water street, and within the limits of the north and south lines of his lot, extended eastwardly to the channel of the river. The defendants gave in evidence a map certified under the seal of the land office department at Washington city, purporting to be on file in that office, and which appeared to have been made in 1760, and by a French surveyor. This map indicated that all the land lying near the river was divided into oblong squares, and that streets bounded them; the space between the river and the front line of the square appeared as vacant property, and the word *quai* was written in two places on that space. It was further in evidence, that till the year 1817, the king's wharf was the only wharf in the city of Mobile. The defendants, further to sustain his issue, and to explain the nature of Lucy Landry's claim and possession, gave in evidence the papers hereto attached, A & B, taken from the land office at St. Stephen's, and the paper marked C, as the survey of the said property, and which explains the location. Further to sustain their issue the defendants gave in evidence an act of the General Assembly of Alabama. It was admitted that the bond exacted by that act, was given and was formal and regular, and the deed under the sale in pursuance of it is attached—as also proof of the insolvency of Holman's

estate. Further to sustain their issue, the defendants gave evidence of a bond of Oliver Holman to Charles Brown, a decree of the Supreme Judicial Court of Massachusetts, and the deed under it, all of which are attached; regular conveyances were deduced from Brown to the defendants, and which deeds were formal, exact, and regular. The court ruled that the act of the Legislature of Alabama, and the decree or order of the Supreme Judicial Court of Massachusetts, were both inoperative and void; that neither they, nor the proceedings under them, were sufficient to divest the title of the heirs of Holman, and were admissible as evidence only to fix and explain the defendant's claim to possession. To which the defendants, by their counsel, excepts, and prays the court to sign, seal, and certify this exception.

The plaintiffs gave in evidence, that Simon Landry was never married; that he lived in concubinage with a woman, the mother of Lucy Landry, and had several children whom he recognized; that he lived with her for 30 or 40 years. The witness had no knowledge of any other relation of the said Simon in the country. Some of these children were still in life. The defendants proved that, since the year 1823, they, or those under whom they claimed, had been in the sole and exclusive possession of the property sued for, and had made valuable improvements thereon; the titles are fully set out and explained in the preceding statement of facts that relate to this property, and the nature of the claim to title and possession in each. The defendants produced and read a written will made by said *said* Jenier. In the name of the Father, Son and Holy Ghost, amen: be it known to all whom shall see this present testament, that I, James Gerrioz, native of the parish of St. Vincent, &c., wish to make my testament and last will, which I declare to be as follows: and that it be executed in the following manner. Item—I give to the little free mulatto girl, named Lucy, the lot, such as it is, in its present condition, with the new house which is ready to be built upon it, charging Mr. Simon Landry to cause it to be built, and to rent it out for her profit, &c., approving and ratifying the contents of the present. In presence of Messrs. Valentine Dubroca, Francis Fontinello, and Chastang the younger, appointed the executors of the present will.

GERRIOZ.

DUBROCA,
FRANCIS FONTINELLO,
CHASTANG, junr.

Mobile, 7 February, 1788.

Before me, JAMES DE LA SAUSSAYE,
Notary Public.

I certify the above to be a correct extract of the record deposited in my office. In testimony whereof, I have hereunto set my hand and affixed my seal of my office.

Mobile, 23 June, 1813. ZENO OORSO,
Not'y Public.

The court charged the jury as follows, which charge was excepted to, and the court asked to certify the same, which was done. The defendants' counsel moved the court to instruct the jury, that if the lands east of Water street formed a portion of the public quai, and was so used until 1818, and during the sway of the Spanish authorities, constantly recognised as such, and that no entry or improvement was made until the entry of Holman and Brown, and the jury shall believe their entry, or that of either of them was to carry on joint mercantile operations, and no title is proven that will embrace these lands, that the plaintiff cannot recover. This charge the court refused to give to the jury.

The defendant's counsel moved the court to charge the jury, that if they shall believe these lands formed a portion of the public *quai*, and were not embraced in Lucy Landry's possession, and the entry upon the said public quai was made by Holman and Brown, or Holman, for the benefit and use of Holman and Brown, in 1818, without any other title than that derived from Lucy Landry, or McKinsey and Swett, then the plaintiff cannot recover. This charge the court refused to give.

The defendants' counsel moved the court to charge the jury, "that if *if* they shall believe that Charles Brown claimed the land on the 26 May, 1824, that is, west of Water street and fronting thereon, and that he was in possession of, and had made improvements upon the lands east of Water street, at the same date, under an adverse title to the plaintiff, than the plaintiffs cannot recover. This charge the court refused to give.

The defendants' council moved the court to charge the jury, that if they believed that the location of Simon Landry's permit to settle, (hereunto attached,) extended to Water street, and that no written evidence of title in Lucy was produced, and no title proven in her; that then the act of 1824 *enured* to the benefit of the heirs of Simon Landry, and not to the benefit of the plaintiff. This the court refused.

The defendants' counsel moved the court to charge the jury, that unless written evidence of title be adduced, or proof be given of claim under such title, on the part of the plaintiffs, derived from some one of the authorities that have ruled the country, that the act of 1824 cannot enure to the benefit of the plaintiffs. This the court refused.

The defendants' counsel moved the court to charge the jury, that if the plaintiffs had no possession of the lots, on the east or west of Water street, in 1824, that they are not in a situation to obtain the benefit of the act of Congress of 1824. This the court refused.

The defendants' counsel moved the court to charge the jury, that if the defendants, or those from whom *he* claims, were in possession of the lands sued for, in 1824, claiming the title thereto, that the act of Congress is inoperative against them. This the court refused.

The defendants' counsel moved the court to charge the jury, that if the defendants have remained in the possession of those lands since 1823, and that prior to that time, the same lay between high water and low water-mark, and that the line of Water street was the eastern boundary of the possessions of the Landrys; then the plaintiffs cannot recover. This the court refused, because there was no proof that the defendants *was* in possession, for ten years after that time; and because the ancestors of the plaintiffs *was* proved to have been in possession at his death.

The defendants' counsel moved the court to charge the jury, that if the jury should find that in front of the squares laid out to the east of Royal street and west of Water street, that no lots were laid off by the Spanish government, and that during the period that the country was occupied by the authorities of the king of Spain, the land in front of Water street *were* reserved for the common use of the people, and that no disposition unfavorable to that right was made by the American government, prior to the act of May, 1824, and that the entry upon these lands *were* made by Holman, for the advantage of the business of the firm of Holman and Brown, and with the consent of Brown, and that their business was carried on then, and their common benefit consulted by such entry; that inasmuch as there was no title in the original entry, there can be no suit brought by the heirs of said Holman, against those claiming under said Brown. This charge the court refused.

The defendants' counsel moved the court to charge the jury, that if Agnes Howard never had possession of this property, and that her mother was dispossessed by Brown, and died out of possession, she could not make a valid demise without an actual entry. This charge the court refused; and for the refusals of the court to charge as aforesaid, and the decisions of the court upon the matters contained in the evidence of title furnished by the defendants, the defendants, by their attorneys, except in this case; the court allowed to be read in evidence the act of the General Assembly of the State of Alabama, entitled an act. To the reading of this act the plaintiffs' counsel objected, but the objection was overruled, and the court charged the jury, that if they should find a verdict for the plaintiffs, it was their duty to enforce the provisions of the said statute, and to return a verdict according to the provisions of the same. It was previously proved, that the improvements mentioned in the plea or suggestion of the defendants, had been made before the passage of the said act. To the admission of this act and the charge as given, as above stated, the plaintiff, by their counsel, ex-

cepts, and prays that this, their bill of exceptions, be signed and sealed, which is done.

J. McKINLEY. [L. S.]

Whereupon the court charged the jury, that the proceedings in the court of Massachusetts, on said bond from Holman to Brown, and all the conveyances under them are void, and confirm no title upon the defendants. That the statute of Alabama, authorizing the sale of said lot by the administration, is unconstitutional, and the conveyance under it void, and conveyed no title to the defendants; and the court further charged the jury, that if they believed from the evidence, that the said Jeanier was in possession of the lot described by the witnesses, from before the year 1785, claiming title thereto, and remained in the uninterrupted possession thereof, until his death, and that previous to his death, he gave the said lot to Lucy Andry; and that upon the death of said Jeanier, the father of said Lucy took possession of the said lot, in her name, and remained in possession thereof until she arrived at womanhood, and that she then took the possession and claimed the title thereto, until she conveyed the same to McKinsey and Swett; and that said Oliver Holman, immediately after his purchase of said lot, entered upon said lot and erected houses and a wharf thereon, and remained in possession of the same until his death; and that the defendants, and those claiming under the conveyances made under the proceedings of the court of Massachusetts and statute of Alabama, took possession under said conveyances. And if they believe that, during all the time there was no possession or claim, adverse to that of Jeanier or Lucy Landry, down to the conveyance by Lucy Landry, they had the right to regard the boundaries laid down in the deed of Andry to McKinsey and Swett, as the evidence of the extent of claim of title and possession, by said Lucy Landry, although she, nor those under whom she claimed, had actual possession of the lands; to that extent they will find for the plaintiffs, unless they believe that possession was actually delivered to Brown under said bond, made by Holman, but as the possession of Holman and Brown, as merchants, gave no right of possession to the said Brown, or the defendants claiming from him; and unless they believed that possession had been taken by Simon Landry, of the premises in controversy, under his claim of title, and that he has heirs now living, and that he, or they, have had the possession within twenty years next before the suit was brought, it cannot be set up in this case as an outstanding title; the law is for the plaintiffs, and that their verdict should be for the plaintiffs. These foregoing charges *was* given to the jury, and the specific charges asked for overruled; to which the defendants except, and pray this their bill of exceptions may be signed, sealed and enrolled, which is done.

J. McKINLEY. [L. S.]

The above diagram exhibits a correct view of the relative position and measurement of the several locations of private claims contained in square No. 153, in a plan of the city of Mobile. The western boundary of Water street has been marked as the place where the margin of the river formerly was; this is the line agreed on by the concurrent information of many of the old inhabitants, on whom I called for instruction on this matter. That portion of the city lying eastward of this line is made-land, and assumes a very irregular margin, extending in some places as far as Commerce street, and in others but a little beyond Water street; and as by the industry of the occupants it is continually extending and varying, no survey can be taken of it. It will be filled to Commerce street, and is the point where the land and water will alternately meet, along the whole line of Commerce street. Done this 6th December, 1827.

By W. ROBERTS, *U. S. D. Surv'r.*

General Land Office, March 28th, 1838.

I hereby certify, that the above is *is* a true copy of the paper on file in this office. In testimony whereof I have hereunto subscribed my name, and caused the seal of office to be affixed, at the city of Washington, the day and year above written.

JAS. WHITCOMB, *Commissioner.* [L. S.]

A.

To the Commissioner of land claims east of Pearl river.

Sir,—Please to take notice, that we claim, as executors and agents of the estate of the late Simon Landry, a lot of ground in the town of Mobile, containing seventy-eight feet front on Royal street, extending back to the river, bounded on the north by Little street, on the south by a lot belonging to Don Francisco Fontinello; in virtue of a permit from the Spanish government to the said Simon Landry, bearing date the 10th of March, 1790.

MAXEMELIAN DUBROCA,
EUGENE CHASTANG.

Louisiana, East of Pearl River, Parish of Pascagoula.

Translation.

His Excellency, Don Stephen Miro, brigadier of the armies, governor and intendant general of the city, and of the province of Louisiana, &c. &c.: Simon Landry, inhabitant of the jurisdiction of Mobile, with due respect, presents himself before your Excellency, and says, that having built a house upon one of the lots parallel with the river, de la linca de la rivira, bounded on the north by a small street, and on the south by a lot belonging to Francis Fontinellas, containing seventy-eight feet front on the street, by a depth to the river; and as he has no title for the said lot, he hopes your Excellency will be pleased to grant it to him, and be good enough to order, that the proper title of concession be delivered from the office of the secretary of the government. He further supplicates your Excellency to do as he requests, by which he will receive great benefit.

Mobile, 26th of October, 1789.

SIMON LANDRY.

I, Don Vinconta Fotch, Captain of the regiment of fixed infantry of Louisiana, and political and military commandant of the post and district of Mobile, certify that what the petitioner represents is true, and is entitled to the favor he solicits.

VIZ'LA FOTCH.

New Orleans, 10*th March*, 1790.

The commandant of Mobile will put the petitioner in possession of the seventy-eight feet of land front, as far as by the depth of the river, as it is described in the proceeding petition; it being vacant and not prejudicial to any one. He will also send me the map thereof, in order that I may furnish the parties interested with titles in due form.

STEPHEN MIRO.

I certify, that the proceeding copy is conformable to the original deposited among the archives under my care.

Mobile, the 5th of July, 1792.

MANUEL DE LANZOS.

Inhabited and cultivated since (1783) one thousand seven hundred and eighty-three; no survey; report No. 4; register of claims to land in the district east of Pearl river, in Louisiana, founded on orders of survey; requettes permission to settle, or other written evidence of claim, derived from either the French, British or Spanish authorities, which, in the opinion of the commissioner, ought to be confirmed; number 9; by whom claimed, heirs of Simon Landry; original claimant, L. Landry; nature of claim, and from what authority derived, Span. ord. settlement; date of

claim, 10th March, 1790; quantity in feet, 78 front, 120 deep; area 9,360; where situated, Mobile; by whom issued, Stephen Miro; no survey; cultivation and inhabitation, 1783 to 1813.

WM. CRAWFORD, *Commissioner.*

Transcript from the register of certificates granted for claims to lots in the town of Mobile, in the district of Jackson court-house, Mississippi, contained in the report No. 4, of the commissioner, William Crawford, and confirmed by virtue of the 2d section of the act of Congress, passed the 8th of May, 1822, entitled an act confirming claims to lots in the town of Mobile, &c. &c. Number of certificate, 7; number of claims, 9; number of report, 4; heir of Simon Landry; original claimant, Simon Landry; nature of claim, Spanish order of settlement; quantity confirmed, 78 feet front, 120 feet deep; where situated, town of Mobile; register of locations issued for confirming claims to lots in the city of Mobile; date of warrant, 10th November, 1827; number of warrant, 388; number of certificate, 7; number of claim, 9; number of report, 4; claimant, Simon Landry; where situated, Mobile; in what manner located, in conformity to the title recorded in the land office.

Land Office at St. Stephen's, 3d May, 1838.

I certify, that the annexed transcript of the claim of Simon Landry is a correct copy from the records of this office book of record of claims, laid before and acted on by Wm. Crawford, commissioner, and Messrs. *Barnett* & Barnett.

JAMES MAGOFFIN, *Register.* [L. S.]

B.

To the Commissioner of land claims east of Pearl river.

Sir,—Please to take notice, that I further claim, as agent for Lucy Landry, a lot situated in Royal street, containing twenty-four feet front by the ordinary depth, (120,) by virtue of a grant lost by time or accident, given by the Spanish government, in favor of Maria Anna Dufrey, who, by bill of sale, dated the 16th February, 1793, sold it to Simon Landry, who was agent for the above mentioned Lucy.

his
REGIS ⋈ BERNODY.
mark.

Louisiana, east of Pearl river, parish of Pascagoula, June 23d, 1813.

Know all men by these presents, that I, Maria Ann Dufrey, inhabitant of this place, acknowledge that I sell, bona fide and effectually, to Simon Landry, a piece of ground containing twenty-four

feet front, situated on Royal street, bounded on the north by a lot belonging to the said Andry, and on the south by a lot belonging to me; and I sell it for the sum of twenty-four dollars, to me cash in hand paid, the receipt whereof I do hereby acknowledge; wherefore I give up and relinquish all right, title, and claim, which to the said piece of land I have, and the whole thereof I yield, renounce, and transfer to the purchaser, in order that as his own he may possess it in any manner he thinks proper, by virtue of this writing, which in his favor I give in sign of real delivery, whereby he may be seen to have required legal possession, without the necessity of any other proof, from which I exempt him, obliging myself to guarantee in every lawful, from the legality of this sale to the extent of my property, present and to come, with submission to the power and justice of his Majesty, whereby I may be compelled to the fulfilment thereof with the rigor of a judgement at law; whereupon I renounce the laws, customs, and privileges in my favour and defence, with the general that forbids it; and I, the Simon Landry, being present, accept in my favor this deed of conveyance, and by virtue of it, the purchase of the said peice of land, for the price and on the condition hereinbefore stipulated, and wherewith I acknowledge myself to be satisfied. In testimony whereof this deed is executed in the town of Mobile, the 16th day of February, 1793, and the parties hereto have signed, which I, the commandant of the district, certify.

Witnesses:
FRANCIS FONTINELLAS,
JAMES DE LA SAUSSAYE,
Inhabitants of this place.

Mark of ⋈ MARIA ANNE DUFEY.

Witnesses:
JAMES DE LA SAUSSAYE, by request,
FRANCIS FONTINELLAS.

Before me, MANUEL D. LANZOS.

Copy from the English.

I certify the above to be a correct extract of the record deposited in my office. In testimony whereof I have hereunto set my hand and affixed the seal of my office. Mobile, June 22d, 1813.

ZENO ORSO, *Not. Pub.* [L. S.]

Inhabited and cultivated since 1793, no survey; report No. 11, town lots; register of claims to land in the district east of Pearl river in Louisiana, founded on private conveyances, which have passed through the office of the commandant, but which are founded, as the claimant supposes, on grants lost by time or accident; No. 39; original claimant, Maria A. Dufey; quantity claimed in

feet, 120 deep, 24 feet front, area, 2,880; where situated, Mobile; cultivation and habitation, 1793 to 1813.

Remarks.

Though the original grants, upon which the preceding claims are founded, have been lost, yet it is conceived that the claims to such lots as were inhabited and cultivated under the Spanish government, or such as were built upon by permission of the Spanish authorities, ought to be confirmed.

WILLIAM CRAWFORD, *Commissioner.*

No. 8.

Transcript from the register of certificates granted, for claims to lots in the town of Mobile, in the district of Jackson court-house, Mississippi, contained in the report No. 11 of the commissione, Wm. Crawford, and confirmed by virtue of the 3d section of the act of Congress passed the 8th of May, 1822, entitled an act confirming claims to lots in the town of Mobile, &c., &c.

Number of certificate, 38; number of claim, 39; number of report, 11; present claimant, Lucy Landry; original claimant, Maria Ann Dufey; quantity confirmed, 24 feet front, 120 feet deep.

Register's department, land office, Jackson court-house, Mississippi, January 1, 1823.

Register of locations issued for confirming claims to lots in the city of Mobile. Date of warrant, 10th Nov., 1827; number of warrant, 390; number of certificate, 38; number of claim, 39; number of report, 11; claimant, Lucy Landry; where situated, Mobile; in what manner located, in conformity to the title recorded in the land office, say 24 feet front by 120 feet deep.

Land office, St. Stephen's, Ala., May 3d, 1838.

I certify the foregoing transcript of the claim of Lucy Landry to be correctly copied from the records of this office book of claims, acted on by Wm. Crawford, commissioner, and Messrs. Barton & Barnett.

JAMES MAGOFFIN, *Register.*

Mobile, 5th December, 1827.

The undersigned, register and receiver of the land office at Augusta district, of Jackson county, Mississippi, pursuant to general instructions heretofore received from the commissioner of the general land office of the United , directing us to attend on the ground, in the city of Mobile, for the purpose of ordering the manner in which all the confirmed claims to lots in the said city should be surveyed, and to determine and settle all conflicting and interfering claims therein. In obedience to the said order, we attended

on the ground in the said city, and have the honor to report the following facts, in relation to the claims in the square bounded west by Royal street, north by St. Francis street, as the same has been opened by the corporation of said city of Mobile, east by the former margin or edge of the river Mobile, now the west side of Water street, and south by Dauphin street. A diagram of said square is herewith transmitted, containing a correct representation of the different claims within the said square, shewing the relative situation of each claim. The claim of Joshua Kennedy, as representative of Henry Boudain, is founded on a Spanish concession, dated 1798, recommended for confirmation by the commissioner, Wm. Crawford, Esquire, and confirmed by the second section of the law in relation to town lots, &c., &c., approved 8th May, 1832. With this claim the following claims are found to conflict. Claim No. 1, in report No. 7, of the register and receiver; James Badger present claimant, William Plumer, original claimant. Claim No. 2, report No. 7, of the register and receiver; Carman Fridge, present claimant, William Plumly, original claimant. Claim No. 4, report No. 11, of the commissioner, Mr. Crawford; Bazile Chastang, present claimant, John Chastang, original claimant. Claim No. 3, report No. 7, of the register and receiver; representatives of William Pollard, present claimants, William Pollard, original claimant.

We have the honor to report to George Graham, Esquire, commissioner of the general land office, in the following statements of facts in relation to the above described conflicted claims:

Claim No. 1, report No. 7, of the register and receiver; James Badger, present claimant, William Plumly, original *original* claimant; on this confliction we have the honor to make a special report. Claim No. 2, report No. 7, of the register and receiver; Carman Frazee, present claimant, original claimant, William Plumly. Altho' the register and receiver, in their report on the above claim, remarks that this claim was inhabited and cultivated prior to the 15th of April, 1813, yet the testimony on record, in relation to the occupancy of the same, taken before W. Barton, register, says, that it was inhabited and cultivated since 1813. The original claimant of this claim is the same William Plumly who is the original claimant of claim No. 1, report No. 7, before recited, who derived his possession by means of a case, from William Pollard, as described in our special report previously referred to. Claim No. 4, report No. 11, Bazile Chastang, present claimant, John Chastang, original claimant, founded on a confirmation of a grant lost by time or accident, for one hundred and forty-five feet front, by two hundred and eighty-one deep. The present claimant of this claim derives his title from the will of original claimant, made under the American government, at Washington county, in the then Mississippi territory, dated 12th October, 1805, in the words following: also, a certain lot or parcel of land lying in the town of Mobile, with its

appurtenances. This will or instrument does not appear to have passed before, or to have been recognized by any of the Spanish commandancies, or any Spanish authorities. The present claimant, in his applicant to the commissioner, describes his claim as bounded by Rue Royal, (Royal street) and Rue Conception, (Conception street) and lying between Rue Royal and the river, and on the upper side of Rue Conception, fronting one hundred and forty-five feet on Rue Royal, and two hundred and eighty-one on Rue Conception, English measure. In the proof on record in relation to the occupancy of this lot, the witnesses state that the lot was taken possession of by John Chastang, the original claimant, a house built on part of the lot picheted in *in* 1782; that not more than one-half of said lot was contained within the pickets. It is believed by the register and receiver, that the original occupancy of this lot did not extend more than one hundred and fifty-one feet from Royal street, in the direction where it meets the claim of Henry Boudain. This opinion is strengthened by the corroberating circumstance of the testimony above alluded to, and their own observation on the ground, and the testimony adduced to them on the ground goes fully to establish this fact. The register and receiver are of opinion, that claims No. 1 & 2, in report No.7, being founded on occupancy, must yield to the superiority of claim No. 46, in report No. 4; claim No. 4, report No. 11, of the commissioner, William Crawford, Esquire, Bazile Chastang, present claimant, John Chastang, original claimant. By reference to diagram No. 1, you will discover that this claim, given to the extent of the confirmation or quantity specified in the report of the commissioner, will cover the entire claims of Badger & Frazee, and will conflict about one hundred and thirty-six feet with the claim of Boudain.

We are therefore of opinion that this claim must yield to the claim of Boudain, so far as they are represented to conflict.

Claim No. 3, in report No. 7, of the register and receiver; representatives of William Pollard, present claimants, William Pollard, original claimant, of which claim Joshua Kennedy is now the legal representative: the original claimant in this claim obtained his right by means of a conveyance from Joshua Kennedy, which right was again recognised by the representatives of said claimant, to the said Kennedy. This claim appears to have been regularly entered with Mr. Crawford, the then commissioner, by the agent of Pollard, and the evidence of the same recorded in book A, pages 301 to 305. This claim was regularly entered with the register and receiver, Barton & Barnett, and designated as before mentioned; and altho' they remark, in their report on this claim, that *is* was not inhabited and cultivated, we are of opinion that this claim must yeild to the claim of Henry Boudain.

Claim No. 33, in report No. 11, Pierre Lucian, present claimant, Mrs. Toinet, original claimant, founded on grant, lost by time or accident. The present claimant claims under a deed of exchange

and confirmed for the quantity of ninety feet front, by one hundred and fifty-six feet deep; dated at Mobile, the 11th April, 1804, and duly certified by a notary public; inhabited and cultivated since 1780, with this claim. Claim No. 4, in report No. 11, Bazile Chastang, present claimant, John Chastang, original claimant, is found to conflict. We are of opinion that this claim must yield to the superiority of claim No. 33, in report No. 11.

Claim No. 4, in report No. 11, Bazile Chastang, present claimant, John Chastang, original claimant; this claim is found to conflict materially with claim No. 3, in report No. 7, representatives of William Pollard, present, William Pollard, original claimant; the legal representatives of the last mentioned claim, having entered his coveat against claim No. 4, in report No. 11, with a request of time to place his claim fairly before the commissioners, and to support his objections against said claim, that the two claims may be considered and adjudgudicated on their true merits; we therefore suspend our final opinion, as it regards the last mentioned confliction. Claim No. 39, in report No. 11, Lucy Landry, present claimant, Marianne Dufee, original claimant, confirmed for twenty-four feet front, by one hundred and seventy feet deep; with this claim there is no confliction. Claim No. 9, report 4, heirs of Simon Landry, present claimant, Simon Landry, original claimant, founded on a Spanish order of settlement, and confirmed for seventy-eight feet front, by one hundred and twenty-five deep. The original claimant of this claim petitioned the intendant for seventy-eight feet front, by the depth of the river, which was granted in accordance with his petition, by decree, dated 10th of March, 1790. We are of opinion, that, altho' the commissioners have reported this claim for one hundred and twenty feet deep, that by a liberal construction of the laws, on which it rests for confirmation, the claimant would be entitled to the lot, in conformity of the order of settlement. Diagram No. 2, represents the claims as ordered to be surveyed under the above decision.

The register and receiver, after an elaborate investigation of the titles to lots in the city of Mobile, and the reports of former commissioners of land claims, appointed under the authority of the United States, to determine on the legal validity, pursuant to the several acts of Congress of the United States, in relation thereto, have agreed upon and determined, generally speaking, on all the locations deducible from said titles to lots. They are compelled, frankly to admit, that, in the discharge of the arduous duties imposed upon them by the laws, they have met with difficulties calculated to impede their progress, although very considerable light has been thrown on the various subjects had before them from the instructions of the commissioners of the general land office, still their path on many occasions has not been pointed out by any light collected by the laws or instructions before adverted to. They have, however, persevered, and, although a consummation of their labors,

with justice as well to the government as to the individuals concerned, was a great desideratum with them, yet they entertained some apprehension that their lights may not have sufficed on all occasions to shield them from errors or imperfections of judgement; if any such errors of decision have intervened from the mass of cases presented to their cognizance, they are sensible they will be corrected by the competent revisionary power. Before concluding their labor, however, on the subject of lots, in the city of Mobile, they have, from a sense of justice, both to the government and the individuals concerned, felt it a duty *of* digress somewhat from the strict line of their deligated power, and present to *to* consideration of the commissioner of the general land office, and through him to the government, which they have the honor to serve :

Such views in relation to lots, in the city of Mobile, the tenures by which they are held, and the difficulty of making legal locations of them, as have struck them with cogency, whilst engaged in the prosecution of their labors, by a reference to the titles to lots in the city of Mobile ; it will be seen that the eastern boundary mentioned in them as the river Mobile, determining their locations, with our imperfect knowledge of the laws, we have assumed as a ground of correct construction of the term, river Mobile, the Mobile river, as it existed at the time of the grant, because the counter construction would involve the absurdity, that, by extending the eastern boundary, mentioned in the title, to the margin of the Mobile river, as it now exists, (and which is perhaps warrented by laws.) Claimants, in many cases, would receive a much larger quantity of ground than their titles call for, as may be seen by reference to diagram No. 3, herewith transmitted.

It is believed to be a correct principal of law, that where natural boundarys are called for by the grant, the grantees are entitled to all the land within them; yet, from no apprehension, (if we admit the principal,) that we might depart from the true intent and meaning of the acts of Congress, transmitted to us for our direction, and transcend our power, we have in our locations circumscribed the probable legal intent of those grants, so far as to confine their eastern boundary to the river Mobile, as it existed at the time of the grant, believing that their rights, by this rule of construction, would in no manner be jeopardized, and if our views on the subject were, claimants would receive from the liberality of our government that justice, which, in our opinion, they deserve to have meted out to them. The increase of soil discribed in diagram No. 3, of one square of the city with its front, contains a representation of that which has formed the basis of our difficulties, has been formed partly by deposites made by successive flows of the tide for many years past; and partly, and the greater part by art, or removing or filling the same with earth, agreeing in many essential particulars with our understanding of the definition of the term alluvion; whether the proprietors fronting on the river be in law entitled to

this made land, or alluvion soil formed in front of his lot, is not for the undersigned, under their impression of duty, to decide, but is respectfully submitted to the competent authorities; the act of Congress of the United States, passed on the 26th May, 1824, entitled an act granting certain lots of ground to the corporation of the city of Mobile, and to certain individuals of said city, absolutely vests in certain front proprietors, &c., between certain defined boundaries, the alluvial or made soil in front of their respective lots, clearly evincing the bounty and liberality of our government in reference to the original grantees, or those holding under them, within those specified boundaries; from an attentive consideration of the whole matter as presented, we are impressed with the opinion that if the titles to lots above adverted to, are entitled to confirmation under the existing laws of the land, claimants under them have, nevertheless, a pre-eminent claim to the equitable interposition of the government in their behalf; and, as no act of Congress heretofore passed has designated the mode in which claimants, when under the act of Congress of 1824, before mentioned, are to perfect their titles and procure patents for the ground they claim, it seems to the register and receiver, that it is essential to the commercial advancement and prosperity of Mobile, in which the general government must feel deeply interested, that some early measures should be adopted and pursued, to quiet and perfect the claims and titles to lots in the city of Mobile; all of which is respectfully submitted.

We are, very respectfully,
Your most obt. serv'ts,

(Signed) WM. HOWZE,
(Signed) G. B. DAMERON.

GEO. GRAHAM, ESQ.,
Commr. Genl. Land Office, Washington City.

GENERAL LAND OFFICE, March 28th, 1838.

I hereby certify that the foregoing, on pages 1 to 16 inclusive, is a true copy from the original on file in this office.

In testimony whereof, I have hereunto subscribed my name, [L. S.] and caused the seal of office to be affixed, at the city of Washington, the day and year above written.

JAS. WHITCOMB,
Commissioner.

An act to authorise the administratrix of Oliver Holman, deceased, late of the county of Mobile, to sell real estate.

SECT. 1. Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, that the administratrix of the late Oliver Holman, resident in the city of

Boston, Massachusetts, be, and she is hereby authorised, to sell, by Nathaniel Littlefield and Gorham Davenport, her attornies in fact, the real estate of which the said Oliver Holman died seised, in the city of Mobile, on such terms and in such manner as may be deemed most advantageous to the estate of said deceased.

SECT. 2. And be it further enacted, That the said administratrix be, and she is hereby authorised, by her attornies aforesaid, on the sale of said real estate, to make to the purchaser or purchasers, as the case may be, a legal conveyance of the same, which shall be as binding as if the same had been made by the said Oliver Holman, in his life time.

SECT. 3. And be it further enacted, That Nathaniel Littlefield and Gorham Davenport, before the sale of the estate aforesaid, shall enter into bond, with sufficient security, payable to the judge of the county court of Mobile county, for the true and faithful payment of the money arising from the sale of said estate, into the hands of the administratrix thereof, to be appropriated to the payment of the debts of the deceased.

Approved, 21 Dec., 1823.

To all people—I, Sarah Holman, of the city of Boston, and State of Massachusetts, administratrix of Oliver Holman, deceased, late of the county and city of Mobile, and State of Alabama, send greeting:

Whereas, by an act of the General Assembly of the State of Alabama, entitled an act to authorise the administratrix of Oliver Holman, deceased, late of Mobile County, to sell real estate, I am empowered and authorised to sell, by Nathl. Littlefield and Gorham Davenport, my attornies in fact, the real estate of which Oliver Holman aforesaid died seised, in the city of Mobile: I have sold, by my attornies aforesaid, a part hereafter discribed, of the said real estate to Charles Brown, of the city of Boston, in the State of Massachusetts, for the sum of fifteen thousand five hundred and fifty dollars, that being the best price offered therefor. Now, know ye, that in pursuance of the power and authority aforesaid, and not otherwise, and in consideration of the said sum of fifteen thousand two hundred and fifty dollars, to me in hand paid, the receipt whereof I do hereby acknowledge, I do hereby sell, transfer, alien and convey to the said Charles Brown, his heirs and assigns forever, the said real estate above mentioned, situated on Water street, of the city and County of Mobile, bounded and discribed as follows: one peice or parcel of land on the north side of Holman's wharf, so called, beginning at Water street and running by the side of said wharf seventy feet by thirty-six feet, more or less, in width; also, one other piece or parcel of land situated on the south side of said wharf, beginning on the south side seventy feet by thirty-five feet, more or less, in width, and an undivided half of all the remaining

real estate of which Oliver Holman died seised, in the city of Mobile, as discribed in the deed of Michael M'Kinsey and Joseph Swett to Oliver Holman, on the Mobile records, and situated at the corner of St. Francis and Water streets, in said city; to have and to hold the said real estate, with the privileges and appurtenances thereof, to the said Charles Brown, his heirs and assigns forever, to his and their use and behoof forever, with the exception, however, of my right of dower, in said real estate and premises, and which said right of dower I do not relinquish, but expressly reserve for myself.

In testimony hereof, I have, by my attornies aforesaid, hereunto set my hand and affixed my seal, at the city of Mobile, in the State of Alabama, this 24 April, 1824.

SARAH HOLMAN. [L. S.]
NATHANIEL LITTLEFIELD, [L. S.]
GORHAM DAVENPORT, [L. S.]
Attornies in fact.

Signed, sealed and delivered in presence of
EPH. WITNESS, H. PIGEON.

Know all men by these presents, that I, Oliver Holman, doth hereby bind myself to give to Charles Brown my quit-claim deed of one-half part of all the land which I purchased of McKinsey & Swett, in the city of Mobile, on the 28 day of January, 1818, (excepting one certain piece or parcel of land, lying, being, and situate in the city of Mobile, and bounded as follows: commencing at Water street, running eastwardly on the flats of Mobile river seventy feet; thence south to Holman and Brown's wharf, 35 feet; thence west by Holman and Brown's wharf 70 feet, to Water street, so called; thence northwardly by Water street to the first mentioned bounds, be the same more or less. Also, one other certain peice or parcel of land, lying and being, and situate in the city of Mobile, and bounded as follows: commencing at Water street east, by Holman & Brown's wharf 70 feet, south 35 feet to premises of Daniel Paul; thence west by said Paul's premises to Water street 70 feet; thence by Water street north to the first mentioned bounds thirty-five feet, be the same more or less. Both of said pieces of *of* land I do not deed to the said Charles Brown, together with the buildings thereon;) also the wharf, with the reservation of passing to and from, the distance of seventy feet upon said wharf, to my buildings, in case I should have any on my land. This deed to be executed in two years from date, if said Charles request.

In witness whereof, I have hereunto set my hand and seal, this 29th September, 1821.

OLIVER HOLMAN. [L. S.]

Signed, sealed, and delivered in the presence of
JOHN HOLMAN,
ABRAHAM HOLMAN.

To the Honorable the Justices of the Supreme Judicial Court, now held at Boston, within the county of Suffolk, and for the counties of Suffolk and Nantucket, on the first Tuesday in March, in the year of our Lord 1823.

The petition of Charles Brown, of Boston, in said county, merchant, respectfully represents, that Oliver Holman, late of said Boston, merchant, deceased, intestate, by his bond under his hand and seal, and dated 29 September, 1821, and in court produced, covenanted,contracted,and agreed to convey to your petitioner,by deed, one half of all the land purchased by McKinsey & Swett, situate in the city of Mobile, on the twenty-eighth day of January, in the year of our Lord 1818, excepting one peice or parcel of land, being in the said city, and bounded as follows, viz: (here follows a description of the property corresponding to the bond attached; the discription is not given, but reference is made to the bond.) And the said Oliver did further covenant, contract, and agree to execute a deed of said premises to said Charles, within two years from said bond, if the said Charles should request the same. But the said Oliver was prevented from conveying the same by death. And the said Charles further represents, that he and said Oliver were formerly copartners in trade, which copartnership continued until the decease of said Oliver, and that at the time when said Oliver purchased the said premises as aforesaid, it was then agreed between said Oliver and your petitioner, that they should be jointly interested in said purchase as aforesaid; and the amount of the consideration which has been paid therefor, has been taken from the joint stock of said copartnership, and the balance due thereon is owing from them jointly. And your petitioner further represents, that he has performed all the conditions and agreements contained in said bond and on his part to be performed, and that no alterations, improvements, or injuries, have been made in said premises since the date of said bond, excepting those that have been made, sustained, or suffered from the joint stock and fund of said copartnership.

Wherefore, your petitioner prays that your honors grant, license, and empower Sarah Holman, administratrix of the goods and estate of said deceased, to make and execute to your petitioner, such conveyance of the premises as said Oliver would, by said bond, been obliged to make and execute, if he were now living, as in duty bound, &c.

CHARLES BROWN.

The subscriber, the widow of the said Oliver Holman, deceased, and also administratrix of the goods and estates, doth certify to the Honorable the Justices of Supreme Judicial Court of Massachusetts, that she has read and has had due notice of the above petition, and has no objection to offer why the prayer should not be granted, and hereby signifies her consent to the same.

SARAH HOLMAN.

Elihu Reed, of said Boston, merchant, guardian to Sarah Holman, minors and children of said deceased, and Catharine Holman, a daughter of said deceased—so Sarah, Oliver, and Catherine, are the only children and heirs of said deceased—do hereby certify that they have read, and had notice of the above petition, and believe the statements therein made to be correct, and have no cause to show why the prayer thereof should not be granted, and do hereby signify their consent to the same.

CATHERINE HOLMAN,
ELIHU REED.

Upon said petition, ordered, that Saran Holman, administratrix of the goods and estates of the within named Oliver Holman, deceased, be, and she is hereby licensed and empowered to make and execute to the within named Charles Brown, such a conveyance of the premises discribed in the within petition, as the said Oliver Holman would, by his bond, have been obliged to make and execute if he were now living.

Know all men by these presents, that whereas Oliver Holman, late of the city of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, merchant, deceased, intestate, by his bond under his hand and seal, and dated the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and twenty-one, covenanted and agreed to convey unto Charles Brown, of said city of Boston, merchant, by deed, one half part of all the land he, the said Oliver, purchased of Michael McKinsey and Joseph Swett, of Mobile, in the State of Alabama, and situated in said Mobile, as by their deed, dated the twenty-eighth day of January, in the year of our Lord one thousand eight hundred and eighteen, duly recorded and acknowledged, and recorded in book number two, among the record deeds in said Mobile, and pages thirty-six, thirty-seven, and thirty-eight, reference thereunto being had, will fully appear; excepting, however, from said premises, one peice or parcel of land, lying in said Mobile, and bounded as follows, viz:

Commencing at Water street, running eastwardly, on Mobile river, seventy feet; thence south to Holman & Brown's wharf, thirty-five feet; thence west, by Holman's & Brown's wharf, seventy feet, to Water street, so called; thence northwardly, by said Water street, to the first mentioned bounds, thirty-five feet, more or less.

Also, another piece or parcel of land, lying in said Mobile, and bounded as follows, viz: commencing at Water street, by Holman & Brown's wharf, easterly, seventy feet; south thirty-four feet, now or late of Daniel Paul; thence westwardly, by land now or late of said Paul, to Water street, seventy feet; thence by Water street to the bounds commenced as aforesaid, thirty-five feet, more or less, together with the buildings and wharf standing; one half part of said land purchased as aforesaid, excepting said peice or parcel of

said last above described and excepted as aforesaid; reserving, however, to pass to and fro the distance of seventy feet upon said wharf to the building lately belonging to said Oliver, deceased. But the said Oliver was prevented from conveying the same to the said Charles by death, as aforesaid.

And whereas, the Supreme Judicial Court for the Commonwealth aforesaid, begun and held at Boston, within the said county of Suffolk, and for the county of Suffolk and Nantucket, on the first Tuesday of March, in the year of our Lord one thousand eight hundred and twenty-three, did license and empower one Sarah Holman, of said city of Boston, widow, administratrix of the goods and estates of said Oliver Holman, deceased, make and execute unto the said Charles Brown such conveyances of said premises as the said Oliver would, by his bond, have been obliged to make and execute if he was living. Therefore, know ye, that I, the said Sarah Holman, administratrix of the goods and estates of the said Oliver Holman, by virtue of the power and authority in me vested as aforesaid, and in consideration of the sum of one dollar, paid by said Charles Brown, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell, and convey unto the said Charles Brown, his heirs and assigns, one half part of all the land, with the buildings and wharf thereon standing; which the said Oliver Holman purchased from Michael McKinsey and Joseph Swett, as aforesaid, excepting the peice or parcel of land which *are* excepted therefrom, as within mentioned and discribed, and reserving as a right to pass to and fro the distance of seventy feet upon said wharf, as is therein mentioned; to have and to hold the aforegranted premises, with all the privileges and appurtenances to the same belonging, to him, the said Charles Brown, his heirs and assigns, forever, to his and their use and behoof, excepting and reserving as aforesaid.

In witness whereof, I, the said Sarah Holman, administratrix of aforesaid, have hereunto set my hand and seal, this tenth day of March, in the year of our Lord one thousand eight hundred and twenty-four. SARAH HOLMAN, *Adm'x.* [L. S.]

Signed, sealed, and delivered, in presence of two witnesses.

I, David Files, clerk of the Circuit Court of the United States for the Ninth Judicial Circuit and Southern District of Alabama, do hereby certify, that the beforegoing twenty-nine pages contain a full, true, and perfect exemplification of the record and proceedings of a certain suit lately pending and determined in the court aforesaid, wherein Holman and Howard, lessees, etc., were plaintiffs, and Gustavus Beal and Henry Myers *was* defendants.

In testimony whereof, at office, in the city of *in the city of* Mobile, I have hereunto set my hand, and affixed the seal [L. S.] of the said Circuit Court, this seventeenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

DAVID FILES, *Clk. Sou. Dist. Ala.*